

A Yoong Fook Weng & Anor v Lee Kam Sin

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO A02-305 OF 1996
MOKHTAR SIDIN, ABDUL HAMID MOHAMAD AND ALAUDDIN JJCA
31 OCTOBER 2001

B *Land Law* — Beneficial ownership — Retransfer of property held in trust to plaintiff/beneficial owner — Whether argument on estoppel applied — Subject matter not clearly identified, whether caused confusion — Application for transfer of land made in respondent's name, whether court should direct transfer of land to plaintiff instead

C The present appellants ('the appellants') were the executors and trustees of the deceased Ong Ah Moo ('the plaintiff'), the plaintiff in the High Court, who had claimed against the respondent for a declaration that the land held under HS (D) Ka 11713 Pt 38920, Mukim Hulu Kinta, Daerah Kinta ('the land') was the beneficial property of the plaintiff; a declaration that the respondent held the land and all the interests thereon upon trust for the plaintiff; an order restraining the respondent from dealing in any manner whatsoever with any of the interests of the land; an order that the respondent do transfer the land to the plaintiff free of all encumbrances, or as an alternative, an order that the senior assistant registrar do execute a good and registrable memorandum of transfer of the land to the plaintiff; damages, interests and costs. The respondent counterclaimed, in brief, for vacant possession of the land, mesne profits and damages. The learned trial judge dismissed the plaintiff's claim and allowed the respondent's counterclaim. The cause of action was based on alleged fraud on the part of the respondent. Before the Court of Appeal, learned counsel for the appellants also argued on the ground of estoppel and the learned counsel for the respondent argued that the subject matter was not clearly identified.

Held, dismissing the appeal:

- G** (1) The learned trial judge had considered the evidence very carefully and, applying the correct burden of proof, had come to the conclusion that he did. The court found no reason not to agree with his conclusion (see p 287A).
- H** (2) Learned counsel for the appellants had also argued on another ground, ie estoppel, referring to some letters written by the respondent to the Director of Lands and Mines. This ground was not pleaded. The court was of the view that the appellants should not be allowed to rely on this ground. As this was trite law, the court did not think that it was necessary to refer to authorities on this point. In any event, those letters were considered by the learned trial judge in coming to his decision and, in spite of that, he still found in favour of the respondent (see p 287A-B).
- I** (3) It was also argued by the learned counsel for the respondent that the subject matter of the claim was not clearly identified. True,

that at various times 'lot' was confused with 'plot', and the lot number (which was also used as the 'address') differed, but from the pleadings and the evidence, oral and documentary, it was clear that the parties were talking about the same plot, ie Plot 16 and later named Plot 16A. The court was not with the learned counsel for the respondent on this point (see p 287C–D).

- (4) The fact that the title was issued to the respondent showed that the application was made by him in his name. There was no guarantee that had the plaintiff applied for the title in his name, the title would have been issued to him. It might or might not be issued to him or to anybody. The relevant authority had decided to issue the title to the respondent. The court did not think that it was right for the court to direct that the land be transferred to another person (see p 287D–E).

[Bahasa Malaysia summary]

Perayu-perayu sekarang ini ('perayu-perayu') adalah wasi-wasi dan pemegang-pemegang amanah simati Ong Ah Moo ('plaintiff'), plaintiff di Mahkamah Tinggi, yang menuntut terhadap responden untuk satu deklarasi bahawa tanah yang dipegang di bawah HS (D) Ka 11713 Pt 38920, Mukim Hulu Kinta, Daerah Kinta ('tanah tersebut') adalah hartanah benefisial plaintiff, satu deklarasi bahawa responden memegang tanah tersebut dan semua kepentingan di atasnya sebagai amanah untuk plaintiff; satu perintah menyekat responden daripada mengendalikan apa-apa perkara sekalipun berhubung dengan kepentingan tanah tersebut; satu perintah bahawa responden memindahmilikkan tanah tersebut kepada plaintiff bebas daripada semua bebanan, atau secara alternatif, satu perintah agar penolong kanan pendaftar menyempurnakan satu memorandum pindahmilik yang baik dan berdaftar ke atas tanah tersebut kepada plaintiff; ganti rugi, faedah dan kos. Responden membuat tuntutan balas, secara ringkasnya, untuk milikan kosong ke atas tanah tersebut, hasil perantaraan (mesne profit) dan ganti rugi. Hakim perbicaraan yang arif menolak tuntutan plaintiff dan membenarkan tuntutan balas responden. Kausa tindakan adalah berdasarkan fraud yang dikatakan di pihak responden. Di hadapan Mahkamah Rayuan, peguam yang arif bagi pihak perayu-perayu juga menghujahkan atas alasan estoppel dan peguam yang arif bagi pihak responden menghujahkan bahawa perkara pokok di sini tidak dikenalpasti dengan jelas.

Diputuskan, menolak rayuan tersebut:

- (1) Hakim perbicaraan yang arif, yang telah mempertimbangkan keterangan dengan teliti dan, menerapkan beban pembuktian yang betul, telah tiba kepada keputusan yang beliau telah buat. Mahkamah mendapati tiada sebab untuk tidak bersetuju dengan keputusan beliau (lihat ms 287A).

- A** (2) Peguam yang arif bagi pihak perayu-perayu juga menghujahkan alasan lain, iaitu estoppel, dengan merujuk kepada beberapa pucuk surat yang telah ditulis oleh responden kepada Pengarah Tanah dan Galian. Alasan ini tidak diplikkan. Mahkamah berpendapat bahawa perayu-perayu tidak sepatutnya dibenarkan untuk bergantung pada alasan ini. Memandangkan ini adalah undang-undang matan, mahkamah tidak memikirkan perlu untuk merujuk kepada autoriti-autoriti berhubung perkara ini. Dalam apa keadaanpun, surat-surat tersebut diambilkira oleh hakim perbicaraan yang arif untuk tiba kepada keputusan beliau dan, walaupun demikian, beliau masih mendapati menyebelahi pihak responden (lihat ms 287A–B).
- B**
- C** (3) Adalah juga dihujahkan oleh peguam yang arif bagi pihak responden bahawa perkara pokok tuntutan tersebut tidak dikenalpasti dengan jelas. Benar, terdapat beberapa kali ‘lot’ dikelirukan dengan ‘plot’, dan nombor lot (yang juga digunakan sebagai ‘alamat’) berbeza, tetapi daripada pliding dan keterangan, secara lisan dan dokumentari, adalah jelas bahawa pihak-pihak berbicara tentang plot yang sama, iaitu Plot 16 dan kemudiannya dikenali sebagai Plot 16A. Mahkamah tidak bersetuju dengan peguam yang arif bagi pihak responden berhubung perkara ini (lihat ms 287C–D).
- D**
- E** (4) Hakikat bahawa hak milik telah dikeluarkan kepada responden menunjukkan bahawa permohonan tersebut telah dibuat oleh beliau atas nama beliau. Tiada apa-apa jaminan bahawa sekiranya plaintif memohon hak milik atas nama beliau, hak milik tersebut mungkin akan dikeluarkan kepada beliau. Ia mungkin atau tidak mungkin dikeluarkan kepada beliau atau sesiapaapun. Badan berkuasa yang relevan telah memutuskan untuk mengeluarkan hakmilik kepada responden. Mahkamah tidak berpendapat bahawa adalah betul untuk mahkamah mengarahkan agar tanah tersebut dipindahmilikkan kepada orang lain (lihat ms 287D–E).]
- F**

Appeal from: Civil Suit No 22–64 of 1994 (High Court, Ipoh)

- G** *Bachan Singh (Bachan & Kartar)* for the appellants.
Surendra Naidu (Arthur Yeong with him) (Arthur Yeong & Associates) for the respondents.

Abdul Hamid Mohamad JCA (delivering judgment of the court): The present appellants are the executors and trustees of Ong Ah Moo, the plaintiff in the High Court who had died before this appeal was heard. However, in this judgment, we shall refer to the present appellants and the plaintiff simply as ‘the appellants’ except that where the context otherwise requires, Ong Ah Moo will be referred to as ‘the plaintiff’.

The plaintiff claimed against the respondent for:

- I** (a) a declaration that the land held under HS (D) Ka 11713 Pt 38920, Mukim Hulu Kinta, Daerah Kinta (‘the land’) is the ‘beneficial property’ of the plaintiff;

- (b) a declaration that respondent holds the land and all the interests thereon upon trust for the plaintiff; **A**
- (c) an order restraining the respondent from dealing in any manner whatsoever with any of the interests of the land;
- (d) an order that the respondent do transfer the land to the plaintiff free of all encumbrances; **B**
- (e) alternative to (d), an order that the senior assistant registrar do execute a good and registrable memorandum of transfer of the land to the plaintiff;
- (f) damages;
- (g) interests; and **C**
- (h) costs.

The respondent counterclaimed, in brief, for vacant possession of the land, mesne profit and damages.

The learned trial judge dismissed the plaintiff's claim and allowed the respondent's counterclaim for vacant possession. **D**

We dismissed the appellants' appeal.

The cause of action was based on alleged fraud on the part of the respondent. Indeed, that was the only issue before the learned trial judge.

The learned judge narrated the evidence of both parties at great length and concluded: **E**

To my mind, from the evidence adduced, there is hardly any evidence established beyond reasonable doubt that there is an element of fraud, in the registration of the land in the defendant's (respondent's) name.

As that is a finding of facts by the learned trial judge which we find no reason to disturb, we do not think that it is necessary for us to narrate and discuss the evidence at length as the learned trial judge has rightly done. We will only reproduce sufficient facts to enable this judgment to be understood. **F**

According to the plaintiff, he was the sole proprietor of Hin Lee Chan Mee Hoon Factory erected on Lot 10393, Cross Road Menglembu, Ipoh. He held the temporary occupation license ('TOL') for the lot until 1979. His property was situated on the said lot. **G**

However, it should be pointed out that the appellants only produced the TOL for 1975, 1976 and 1977. Furthermore, those three licenses show that there were two joint holders of the TOL, namely one Lim Chin Hui and the plaintiff. No TOL was issued for 1978. The TOL for 1979 was issued in the name of the respondent. The TOL continued to be issued in the name of the respondent until 1991. **H**

On 29 March 1991, final title to the land was issued in the name of the respondent. **I**

The plaintiff alleged that the respondent had fraudulently secured the TOL and the final title for himself.

A As we have said, the learned trial judge had considered the evidence very carefully and, applying the correct burden of proof, had come to the conclusion that he did. We find no reason not to agree with his conclusion.

B Before us, learned counsel for the appellants had also argued on another ground, ie estoppel, referring to some letters written by the respondent to the director of lands and mines. This ground was not pleaded. We are of the view that the appellants should not be allowed to rely on this ground. As this is trite law, we do not think that it is necessary for us to refer to authorities on this point. In any event, those letters were considered by the learned trial judge in coming to his decision and, in spite of that, he still found in favour for the respondent.

C It was also argued by the learned counsel for the respondent before us that the subject matter of the claim was not clearly identified. True that at various times, 'lot' was confused with 'plot', and the lot number (which was also used as the 'address') differs, but from the pleadings and the evidence, oral and documentary, it is clear that the parties were talking about the same plot, ie Plot 16 and later named Plot 16A. We are not with the learned

D counsel for the respondent on this point.

Another point worth mentioning is this. The fact that the title was issued to the respondent shows that the application was made by him in his name. Is there any guarantee that had the plaintiff applied for the title in his name, the title would have been issued to him? It might or might not be

E issued to him or to anybody. The relevant authority had decided to issue the title to the respondent. We do not think that it is right for the court to direct that the land be transferred to another person.

In the circumstances, we dismissed the appeal with costs. Deposit to be paid to the respondent on account of taxed costs.

F *Appeal dismissed.*

Reported by Chew Phye Ken

G

H

I